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Jim O'Connor - Chairman  
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Nick Myers



NICK MYERS  
Commissioner

## ARIZONA CORPORATION COMMISSION

October 17, 2023

*In the matter of the Commission's Inquiry into the Inclusion, Equality, and Diversity Programs within our Regulated Utilities (AU-00000A-20-0311).*

Mr. Scot Mussi and the Arizona Free Enterprise Club:

I am writing this letter in response to your letter dated August 25, 2023, which was filed in this docket on September 15, 2023. I would like to thank you for reaching out to the Commission and expressing interest in the work we do as Commissioners. As you know, the Commission has the constitutional duty to prescribe "just and reasonable rates" (Ariz. Const. art. XV, §3), while ensuring the utilities it regulates provide safe and reliable service to their customers (see Ariz. Const. art. XV, §3). Therefore, it is of utmost importance when members of the public bring matters to my attention that may be impacting rates and reliability of service.

In your letter, you raise the concern that some of the utilities the Commission regulates have adopted Environmental, Social, and Governance (ESG) goals and initiatives, which you contend are "costly for ratepayers" and make "our grid unreliable." Generally, the Commission has the authority to control rates but not the authority to control the utility itself, particularly its internal affairs. See *Johnson Utilities, L.L.C. v. Arizona Corp. Comm'n*, 249 Ariz. 215, 228, ¶ 55 (2020). This is especially the case when regulated utilities implement goals and initiatives handed down from parent companies, which are not public service corporations and which the Commission does not regulate.

That being said, I agree that clean energy mandates or self-imposed clean energy goals that unreasonably drive up rates for customers or jeopardize reliability are problematic. The Commission has the opportunity to address an electric utility's resource mix and its reliability of service in the Integrated Resource Plan process (IRP) (A.A.C. R14-2-701 through 706) and has the authority in a rate case to establish rates and determine what expenses are recoverable from utility customers. Further, in a rate case, parties may intervene and introduce evidence to propose the implementation or discontinuation of utility programs. Based upon the evidence on the record, the Commission may implement or discontinue programs and/or deny recovery for certain programs. The IRP process and rate cases are therefore the best venues to address utility goals and initiatives that may be driving up costs for ratepayers and jeopardizing safe and reliable service. I would encourage Arizona Free Enterprise Club to be active in the IRP process and intervene in future rate cases.

An additional concern you raise in your letter is the legality of utility ESG goals and initiatives. You suggest that utilities may be engaging in unconstitutional workforce discrimination or may be violating federal and state law with their ESG goals and initiatives. I personally agree that utilities should make RFP decisions based on merit and cost, and that the structure of

corporations, board leadership, and hiring practices should be based on merit alone. However, whether these social and governance goals and initiatives are constitutional and in line with federal and state law is not for this governmental body to determine. I would expect the utilities we regulate are taking actions to stay compliant with the law and avoid unnecessary litigation.

Thank you for again for bringing this issue to our attention.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nick Myers', with a long, sweeping horizontal stroke extending to the right.

Commissioner Nick Myers